

## LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for June 8, 2005 PLANNING COMMISSION MEETING

**PROJECT #:** Comprehensive Plan Amendment #05014  
Change of Zone #05035

**Note: This is a combined staff report for related items. This report contains a single background and analysis section for both items.**

**PROPOSAL:**

1. Amend the Comprehensive Plan by deleting several statements that refer to the Theater Policy and entertainment in the downtown, and by deleting one statement requiring market studies for proposed new theaters outside the downtown.
2. Amend Section 27.63.630(c) of the Zoning Ordinance for theaters in the B-5 district to allow theaters with more than six screens provided it is located outside a 6.5 mile radius measured from the center of the intersection of 13<sup>th</sup> and O Streets.

**CONCLUSION:** The Theater Policy, which has been in place for 21 years, has helped implement the Comprehensive Plan goal of maintaining the downtown as the heart of the community and the focus for community entertainment and other activity. The attached study completed by an outside independent theater consultant concludes that the Lincoln theater market is already over-served, and that allowing theater complexes over six screens outside downtown, even 6.5 miles away, would have a serious negative impact on the continued viability of existing downtown theaters. Reduced attendance at downtown theaters will have secondary effects on revenues at downtown eating and drinking establishments, and could lead to the closing of the downtown theater, which would be a serious blow to all the other efforts to revitalize the downtown. Neither the proposed comprehensive plan amendment or zoning text change would further the goal of reinforcing downtown as the unique central place of the community, and in fact would have the opposite effect.

<b>RECOMMENDATION:</b>
<b>CPA#05014</b>
<b>CZ#05035</b>
<b>Denial</b>
<b>Denial</b>

## **GENERAL INFORMATION:**

### **ASSOCIATED APPLICATIONS:**

**CZ#05036** - A change of zone request from AG to B-5 for approximately 14.11 acres to expand Prairie Lakes regional shopping center.

**SP#05023** - To allow an 80,000 square foot, 18-screen theater megaplex on approximately 24.52 acres near the intersection of South 91<sup>st</sup> Street and Pine Lake Road.

**UP#140B** - To amend the Appian Way use permit covering the Prairie Lakes regional shopping center to include an additional 14.11 acres and the theater megaplex.

### **HISTORY:**

**2004** - The Grand Theater with 14 screens opened downtown.

**2002** - A six screen theater was approved for North 27<sup>th</sup> & Folkways Blvd. This theater has not been built to date.

**2002** - The former three screen theater at Edgewood Shopping Center was expanded to six.

**1996** - The three screen theater at Eastpark was expanded to six.

**1996** - The special permit for theaters in the B-5 district was amended to raise the maximum number of screens in a theater complex from 3 to 6 (it was accompanied by a request from Southpointe Pavilions for a 6-screen megaplex, which has since been constructed).

**1994** - The current reference to Theater Policy was included in Comprehensive Plan.

**1992** - The Zoning Ordinance was amended to make theaters in the B-5 a use approved by special permit rather than “by right”, and subject to conditions that the B-5 District must have 400,000 square feet of other floor area with at least 3/4 occupied, and that the District may have no more than one theater complex per district with no more than 3 screens in the complex.

**1984** - The Zoning Ordinance was amended to remove indoor movie theaters from all districts except B-4 (downtown) and B-5, and required a market study in B-5 to assess the impact of new theaters.

## **COMPREHENSIVE PLAN SPECIFICATIONS:**

**Page V2** - Vision - Downtown Lincoln belongs to all residents of Nebraska because “downtown” is synonymous with the University of Nebraska, State government, and the State Capitol building. This state-wide ownership has strong economic implications, and for that reason, as well as the desire to maintain downtown as the “heartbeat” of the community, the Comprehensive Plan will ensure that downtown remains a special place. The plan will seek to preserve vistas and institutions of cultural importance, to reinforce the district as a center of entertainment, and to promote a rich diversity of activities and uses, including housing, education, government, offices and commerce.

**Page F16** - Community Form - Downtown Lincoln continues to serve its role as the central location for commerce, government, entertainment, and the arts. Views to the State Capitol have been preserved, as they have in the past, as part of our community form.

**Page F44** - A key element to this role has been the longstanding and successful “theater policy.” This policy has allowed downtown to retain an appreciable share of the area’s movie theaters. It is intended that this policy would continue as part of the present Plan.”

**Page F44** - Market impact studies will still be required for movie theaters.

**Page F48** - The City should preserve and enhance Downtown’s role as

- the major office and service employment center of the City
- the focus of all levels of government
- the City’s principal cultural and entertainment center
- the hotel and convention center for the City
- the City’s financial center
- a hub of higher education
- specialty retail geared toward employees, area residents, convention visitors and University population

- Lincoln’s successful Theater Policy must be maintained and reinforced. New entertainment attractions should be encouraged to locate in the downtown.

## **ANALYSIS:**

1. The Theater Policy is referenced in the Comprehensive Plan and embodied in the Zoning Ordinance. According to the key provisions in today’s ordinance, theaters outside the downtown area are allowed only on land designated B-5 (Planned Regional Business District), and only through approval of a Special Permit and Use Permit. A key condition for approving a Special Permit is that only one theater with no more than 6 movie screens is permitted in any one B-5 district. The areas zoned B-5 to accommodate regional-type businesses include: North 27<sup>th</sup> Street corridor north of Cornhusker, Westfield Mall, Southpointe Pavilions, and the Edgewood and Prairie Lake shopping centers (see map included with this report). The Theater Policy has encouraged the continued concentration of theater screens in the downtown area, with smaller theater complexes constructed or approved in outlying areas. The policy also has encouraged private investment in the Grand, a

new 14-screen complex on the downtown block bounded by O and P Streets and 12<sup>th</sup> and 13<sup>th</sup> Streets to replace a similar number of screens in outmoded facilities.

2. Theaters are an important part of an overall entertainment package offered in the downtown area that makes the area more vibrant and attractive for other uses: office and services, retail, residential, and hotels. Today's downtown contains nearly 20 percent of the city's jobs and its hotel rooms, and contributes a tax base valued at nearly \$300 million. Recent studies sponsored by the Lincoln Chamber of Commerce have underlined the importance to our tourism and convention business of having a concentration of event facilities, hotel rooms, restaurants, retail and entertainment all within walking distance of each other. Downtown Lincoln is proposed in the Comprehensive Plan to continue as "the heart" of the community. Communities act like organisms, and successful communities must have healthy hearts. Much of Lincoln's past and continuing success is attributable to the vibrant, active mix of uses and the special history and character of its downtown. The theater policy has been important in maintaining that activity downtown, along with the City's continuing efforts to reverse slum and blighting conditions through public investment and redevelopment agreements. The redevelopment agreement resulting in construction of the Grand 14 has kept Lincoln theater screens lit in an era where few if any theater screens remain in the downtowns of our peer cities.
3. Regarding the Comprehensive Plan, the proposed amendment would delete the following language, as the applicant states: "...to adopt a neutral position with respect to the location and number of movie theater screens." Specific passages proposed for deletion fall under "Future Conditions – Business and Commerce" in the Plan:

*A key element to this role has been the longstanding and successful "theater policy." This policy has allowed downtown to retain an appreciable share of the area's movie theaters. It is intended that this policy would continue as part of the present Plan" (page F-44).*

*Market impact studies will still be required for movie theaters (page F-44).*

*Lincoln's successful Theater Policy must be maintained and reinforced. New entertainment attractions should be encouraged to locate in the downtown (page F-48).*

The applicant also requested that the Planning Department identify any other passages in the Comprehensive Plan which might be in conflict with their objective. Staff believes that the current policy has played a critical role in reinforcing the number of theater screens downtown, and theaters are a major component of entertainment. Therefore the references to entertainment in the passages below

probably should be stricken as well, if the goal is to reflect the applicant's desire for a "neutral" policy with regard to theaters:

*In the Vision Statement at the beginning of the Plan: "The plan will seek to preserve vistas and institutions of cultural importance, to reinforce the district as a center of entertainment, and to promote a rich diversity of activities and uses, including housing, education, government, offices and commerce" (page V2 under "Vision").*

*Downtown Lincoln continues to serve its role as the central location for commerce, government, entertainment, and the arts. Views to the State Capitol have been preserved, as they have in the past, as part of our community form (page F16 under "Community Form").*

4. The proposed amendment to the zoning ordinance involves a change to one of the conditions required to obtain approval for a Special Permit for theaters in the B-5 District. The current language states that *"Not more than one theater complex shall be allowed for each B-5 District, consisting of not more than 6 movie screens."* The applicant is requesting to add the following language to that sentence: *"...however, if the proposed theater complex is located outside a 6.5 mile radius from the center of the intersection of 13<sup>th</sup> and "O" Streets, it may have more than 6 screens."*
5. This proposed amendment only modifies the current Theater Policy, as opposed to deleting it entirely. Yet the applicant is asking to delete all references to the current Theater Policy in the Comprehensive Plan. This seems to be a conflict in intent, which staff has noted to the applicant.

Also, the applicant has asked to delete reference to performing market studies for proposed new theaters in the Comprehensive Plan. But he did not ask to amend the corresponding provision in the zoning code, under the provisions for use permits in the B-5 District, that require any change in zone or use permit that is in conflict with the Comprehensive Plan to be accompanied by an environmental impact statement and market study, or the corresponding provisions in the Design Standards that detail the information expected in an environmental impact statement.

6. The Comprehensive Plan forms the key basis for all of the regulations in the zoning and other development codes. The references to the Theater Policy in the Comprehensive Plan provide the legislative underpinning for the Special Permit requirements in the zoning code. Removing those references is likely to invalidate either the existing version of the Theater Policy or the applicant's proposed modified version.

7. The practical effect of restricting B5 districts to 6 screens unless they are more than 6.5 miles from downtown is depicted on the map included in this report. All of the current B5 districts would continue to be restricted as they are presently, except for the one district placed on the Prairie Lake development at Highway 2 and 84<sup>th</sup> Street, which is the subject of the associated Special Permit and Use Permit for an 18-screen theater. No other areas in the city or its future growth area, inside or outside the circle defined by the 6.5 mile radius from downtown, are designated in the Comprehensive Plan for regional commercial uses.
8. Based on the very limited information supplied with the application plus informal discussions with the applicant, the claims seems to be that:
  - The current policy has resulted in inadequate facilities that are underutilized by the population.
  - Because of this underutilization, a new megaplex outside downtown would draw new patronage and not have a significant effect on existing patronage at the downtown theaters – especially if it is more than 6.5 miles from those facilities.
  - A megaplex such as the 18-screen theater being proposed in the accompanying applications is the only model being constructed by the movie industry today, and is required to ensure favorable treatment on obtaining new films under the movie industry's film distribution policy.
9. In order to better understand the dynamics of the theater marketplace in Lincoln, City staff contracted with an individual with national experience in developing and operating theaters, as well as providing consulting services. The applicant could have been required to submit an environmental impact study and market study under the provisions for Use Permits in the B-5 District. But we informed the applicant several months ago that the Planning Director would waive this requirement and contract ourselves for this study to be done. The consultant has submitted the attached report on the dynamics of the theater market in Lincoln, national trends affecting the market, and the effects of constructing a new megaplex outside the downtown area. He will be present at the Planning Commission hearing on this item to make a presentation and answer questions.
10. The consultant, in his report and in informal discussions, directly refutes the applicant's claims, concluding that:
  - Lincoln has more screens for its existing population than the national average.
  - Local patronage at these screens is higher than the national average.

- Based on existing demographics, a new theater would need to pull in customers from existing theaters, and it would not be profitable.
- The location of the proposed megaplex at Highway 2 and 84<sup>th</sup> Street suffers from two problems: an unfavorable location at the southeast edge of the existing and future urbanized area, and the proximity of the existing Edgewood 6, with which it would have to share new films under the movie industry's film distribution policy.
- The construction of a new megaplex would have a serious negative impact on the continued viability of the existing downtown theaters. Even at 6.5 miles from downtown, the market area for a megaplex would substantially overlap with the market area for downtown screens. The consultant estimates a 35 percent reduction in patronage and revenues at downtown theaters if the megaplex is constructed. Also noted is the fact that miniplexes as well as megaplexes are still being developed and operated profitably in other theater markets.
- The reduction in patronage and revenues at the downtown theaters could result in a City liability under the terms of the redevelopment agreement. The agreement requires that if the assessed value of the Grand 14 property is reduced below a certain level, due for example to a loss in revenues caused by changes to the theater requirements in the B-5 zoning districts and the valuation of the Grand 14 is reduced due to loss of revenues and is not sufficient to cover the payments on the TIF bonds, then the City would be responsible for covering the payments to cover the TIF bonds, the City will be responsible for paying the difference in taxes owed to the Tax Increment fund.
- A reduction in patronage at the downtown theaters will have secondary effects on patronage and revenues at downtown eating and drinking establishments, and a prolonged loss that darkens the downtown screens would be a serious blow to all the City's other efforts to revitalize the downtown, reducing its attractiveness for other investments and potentially affecting the assessed values of other downtown properties.
- The Theater Policy has been adjusted in the past, and it should be reexamined from time to time to consider adjustments that would account for changes in demographics and other factors. However, the consultant report demonstrates that no change to the policy is necessary or wise at this time.

Prepared by:

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Marvin Krout  
Director of Planning  
May 18, 2005

**APPLICANT/  
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April 27, 2005

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## VIA HAND DELIVERY

Marvin Krout  
Director of Planning Department  
City of Lincoln  
555 S. 10<sup>th</sup> Street  
Lincoln, NE 68508

Re: Comprehensive Plan Amendment

Dear Mr. Krout:

On behalf of Eiger Corp., the owner and developer of the regional shopping center at 84<sup>th</sup> and Highway 2, we request a comprehensive plan amendment to modify the City's existing policy regarding the location of movie theaters. As you know, the existing zoning ordinance is extremely restrictive as it relates to movie theaters, except in the B-4 Downtown Business District. As you and I have discussed in the past, no other business permitted in a regional shopping center district is regulated in the manner theaters are regulated. For example, the zoning ordinance does not limit the number of restaurants, book stores, jewelry stores, banks, or even "places of public assembly, entertainment, or recreation, except theaters." The distribution and exhibition of motion pictures has changed considerably in the years since Lincoln's zoning ordinance was amended to include the current restrictions to no more than six theater screens per B-5 district. We think that the result has been that Lincoln's market is underserved by motion picture exhibitors. We think that a modern entertainment complex, including multiple theater screens, would be welcomed by the people of Lincoln, and would enhance the mix of uses available at the shopping center.

Therefore, we propose that the comprehensive plan be amended to adopt a neutral position with respect to the location and number of movie theater screens. Specifically, we would propose that on page F-44, near the top of the page, the following sentences be deleted:

- "A key element to this role has been the longstanding and successful 'theater policy.' This policy has allowed downtown to retain an appreciable share of the area's movie theaters. It is intended that this policy would continue as part of the present Plan."

Pierson, Fitchett, Hunzeker, Blake & Katt

We would also propose that the following parenthetical sentence near the end of the section entitled "Location Criteria" on the same page be deleted:

- "(Market impact studies will still be required for movie theaters.)"

We also propose the following sentences be deleted on page F-48 under the heading "Principles for Downtown":

- Lincoln's successful Theater Policy must be maintained and reinforced. New entertainment attractions should be encouraged to locate in the downtown."

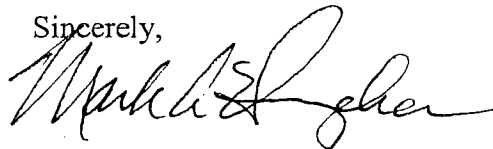
Finally, we would ask that any other language which you may feel has a bearing on this issue be appropriately modified to adopt a neutral position on the location of theaters in Lincoln.

We have presented this idea to the Downtown Lincoln Association Board of Directors. As far as we know, the Board has not taken a position on the issue yet.

As I have discussed with you previously, also enclosed is a proposed amendment to the text of the zoning ordinance to implement these changes, together with a Change of Zone, Use Permit, and Special Permit for the location of an 18-screen theater and entertainment complex in the shopping center. Please give me a call if you wish to discuss this matter further.

Thank you for your consideration of this matter.

Sincerely,



Mark A. Hunzeker  
For the Firm

MAH:la

cc: Greg Sutton  
Kelvin Korver

**27.63.630 Permitted Special Use: Theaters.**

Theaters may be allowed in the B-5 District by special permit under the following conditions:

(a) A use permit for 400,000 square feet or more of commercial floor area has been issued;

(b) A Certificate of Occupancy has been issued for 300,000 square feet or more of commercial floor area; provided, however, that the City Council may decrease or waive this requirement upon a finding that the proposed theaters will have no significant adverse impact upon the property values and existing uses in the B-4 Lincoln Center Business District, with particular emphasis upon the effect of such proposed theaters on the entertainment and cultural uses in the B-4 Lincoln Center Business District; and

(c) Not more than one theater complex shall be allowed for each B-5 District, consisting of not more than six movie screens; **however, if the proposed theater complex is located outside a 6.5-mile radius from the center of the intersection of 13<sup>th</sup> and "O" Streets, it may have more than six screens.**

## Theater Proposal

### 1. Application:

- a. Comp Plan Amendment to delete references to the current "theater policy" as a centerpiece of the City's effort to maintain a strong downtown.
- b. Zoning text amendment to allow more than six-screen theater complexes in B-t Districts if the special permit area is more than 6.5 miles from 13<sup>th</sup> & O
- c. Change of zone to B-5, Use Permit and Special Permit requesting approval for an 18-screen theater complex near 91<sup>st</sup> Street and Pine Lake Road

### 2. Explanation:

Our reasons for proposing the changes are twofold: First, we want to have a first quality entertainment complex at Prairie Lake Shopping Center. In addition to theaters, we expect other entertainment type tenants and restaurants. We think Lincoln deserves this kind of facility and that Lincoln citizens will support it.

Second, we want to have the ability to negotiate with more than one theater operator. We have very high expectations that this will be a state of the art complex – not just in terms of projectors and sound equipment, but also in terms of architecture, premium grade construction materials, expanded food offerings and ancillary entertainment. In short – a step up even from the Grand. In order to be able to negotiate for that kind of facility, we need to be able to "shop" it to more than one operator.

Our client, Eiger Corp., is the developer of the Prairie Lakes Shopping Center at 84<sup>th</sup> and Highway 2. One of the owners was also the developer of South Point.

While developing South Pointe, an attempt was made to include a larger theater complex, because theater developers said they were not interested in building only three screens (the maximum allowed at that time). Other issues made compromise necessary, resulting in a change in the zoning ordinance to allow up to six screens by special permit.

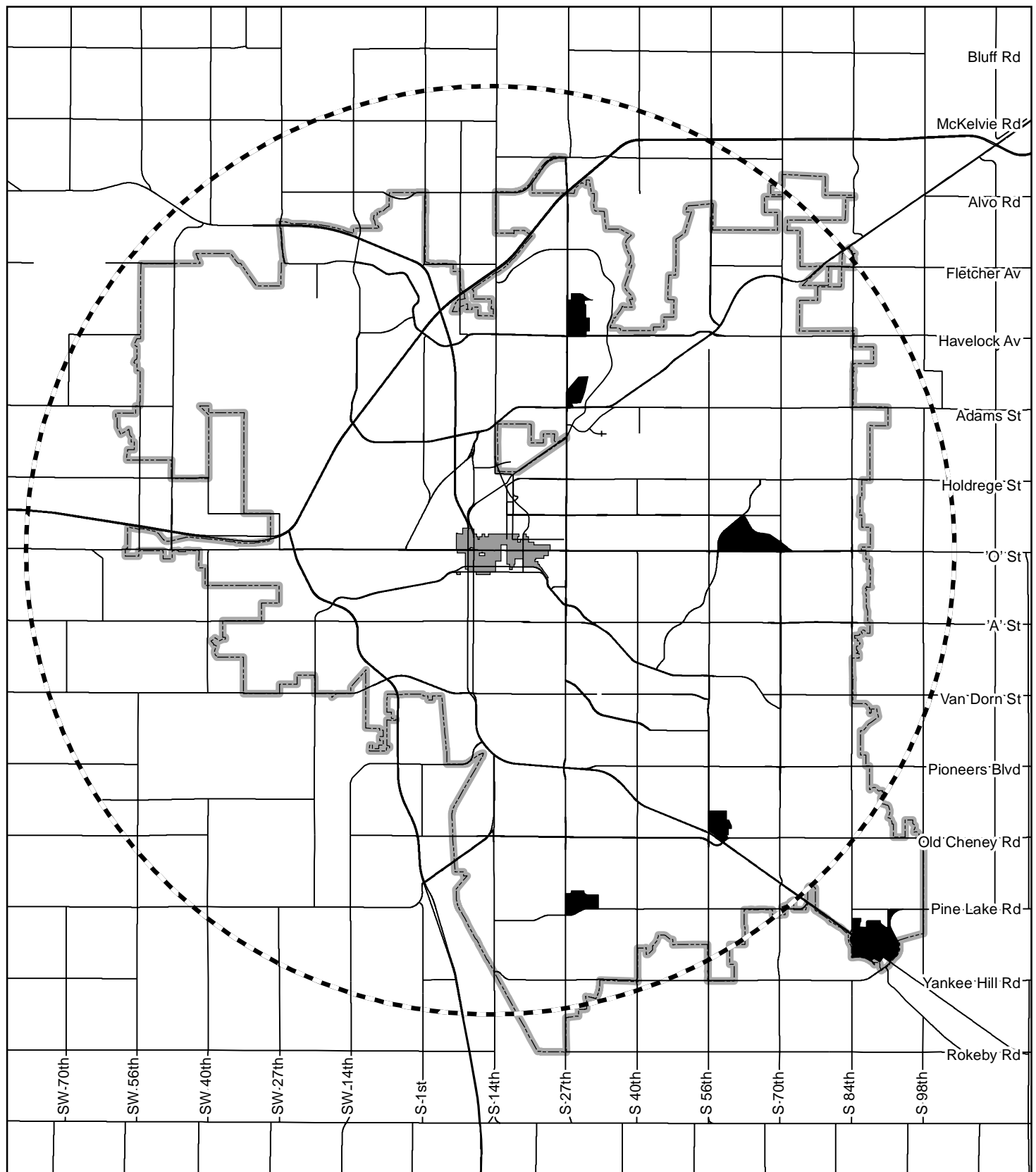
The outside theater developers walked away, leaving Douglas Theater Co. as the only company willing to build a six-screen theater. Douglas has since expanded its three-screen facilities at Edgewood and Eastpark to six screens as well.

The City's restriction on the number of screens allowed outside the downtown area has resulted in all screens in Lincoln being owned by a single company – Douglas Theater Co. That is not to say Douglas Theater Co. is a bad company – in many ways it has been a victim of the City's restrictive policy as well as a beneficiary. If you asked Douglas Theater Co., they would likely say that they would like to have built more screens at South Pointe, or Edgewood, but could not.

The problem with the City's policy is that films are distributed in a way that gives preference to companies operating a certain number of screens within a certain geographic area. A new company coming to Lincoln would never be in a position to get the best movies, because with only six screens, it would never gain the market position to get first choice.

Current City policy virtually prohibits entry into the Lincoln market by new theater operators. No other business is restricted in this way. No other use enjoys such insulation from new competition.

Having said all that, we are not hostile to Douglas Theater. . . If they make the best proposal for Prairie lake, they will be the operator. We have no qualms about that. However, we want to have the ability to build enough screens to attract competitive proposals. We think that is only fair.



# **Land Affected by Proposed Amendment to Theater Policy** **Comprehensive Plan Amendment 05014**

--- 6.5 Mile Radius From 13th & O

■ B-4 Zoning District

■ B-5 Zoning District

--- Lincoln City Limits

